



## **BOARD OF ADJUSTMENT AND APPEALS AGENDA**

**Thursday, November 6, 2014**

**6:30 p.m.**

**Coon Rapids City Center**

**Council Chambers**

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### **Call to Order**

### **Roll Call**

### **Adopt Agenda**

Approval of Minutes from Previous Meeting

### **New Business**

1. PC 14-27V, Thomas Boden, Rear Yard Setback, 12221 Olive Street

### **Other Business**

### **Adjourn**



**Board of Adjustment and Appeals - Regular Session**

**Meeting Date:** 11/06/2014

**SUBJECT:** Approval of Minutes from Previous Meeting

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**Attachments**

September 4, 2014, Minutes

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## **COON RAPIDS BOARD OF ADJUSTMENT AND APPEALS MEETING MINUTES OF SEPTEMBER 4, 2014**

The regular meeting of the Coon Rapids Board of Adjustment and Appeals was called to order by Chairman Wessling at 6:32 p.m. on Thursday, September 4, 2014, in the Council Chambers.

Members Present: Chairman Gary Wessling, Commissioners Teri Spano-Madden, Trish Thorup and Aaron Vande Linde

Members Absent: None.

Staff Present: Housing and Zoning Coordinator Cheryl Bennett, Assistant City Attorney Melissa Westervelt and Housing Inspector Leya Drabczak

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### CALL TO ORDER

Chairman Wessling called the meeting to order at 6:32 p.m.

### APPROVAL OF THE SEPTEMBER 4, 2014, AGENDA

The agenda was adopted as presented.

### APPROVAL OF THE JUNE 5, 2014, MEETING MINUTES

Chairman Wessling noted on page two, the third paragraph, it should state, "He noted he had the home constructed and that he has a pickup truck he has never parked inside the garage because it does not fit. He reported that after the garage ~~proposal~~ is constructed as proposed there would be 39 feet from the street to the door of the garage, and that this included the street easement."

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER SPANO-MADDEN, TO APPROVE THE JUNE 5, 2014, MEETING MINUTES AS AMENDED. THE MOTION PASSED UNANIMOUSLY.

### NEW BUSINESS

1. CASE 14-17V – EVA SPERBER-PORTER/REGAL CAR WASH – 1521 COON RAPIDS BOULEVARD – VACANT PROPERTY MONITORING FEE APPEAL

Housing and Zoning Coordinator Cheryl Bennett advised that a Statement of Findings regarding the facts in this case had been prepared for Commission review and that they were made available should the Commission need them in their deliberation and motion. Chairman Wessling inquired as to the need to go through each finding. Ms. Bennett stated the Commission should start with the staff presentation and then deliberate. As the Commission deliberates, the findings can be considered. The Commission can choose to adopt them, amend any one of them, or discard the entire findings.

Housing Inspector Leya Drabczak reviewed the background of the case. She noted that the property owner filed the appeal including a statement that the company had been monitoring the property on its own. She noted that the City has received two long grass complaints since that

time and, therefore, recommends that the fee be charged in its entirety.

Chairman Wessling opened the public hearing at 6:42 p.m.

Eva Sperber-Porter requested a waiver of the fee, either indefinitely or for at least for another nine months. She advised that the carwash operations were shut down in 2012 and in May 2012, the property was heavily vandalized with damage in excess of \$250,000. She stated she is attempting to manage the property to the best of her ability and is in the process of selling the property. She apologized for the length of the grass. She stated that the property did have a security system but the system was damaged with the vandalism, along with the electric and plumbing services. She stated that she did have an employee cutting the grass at this location but she did not require him to provide photographic proof, acknowledging that she should have requested the photos. She stated that \$1,000 is a hardship as she is already paying higher insurance and the property taxes. She requested that the fee be waived until January as she believes she could sell the property by that time.

Ms. Sperber-Porter stated that she will ask that weeds and grass be cut every ten days with photographic proof being provided to her by her employee. She questioned what could be monitored as the property has already been vandalized and there is nothing left to protect.

Ms. Drabczak advised that if a property is vacant for 120 days or more, and the City has received at least three complaint calls regarding the property, the fee would be charged. She advised that staff would also visit the property, because of its vacant status, a minimum of two times per year to inspect doors and windows.

As no one further wished to speak, Chairman Wessling closed the public hearing at 6:51 p.m.

Ms. Bennett explained this is not a hearing for a special assessment but rather an appeal of the vacant property monitoring fee. She explained that the City has already incurred the expense for monitoring this property. She advised that if the Commission upholds the fee, the property owner would have the ability to pay the fee or the fee would be charged through a special assessment to the property. Waiving the fee for six months would be difficult for staff to track.

Chairman Wessling stated that the number of trips and staff time that has been spent on this property is well documented.

Commissioner Vande Linde stated that the City has spent well over \$1,000 on this property.

Ms. Bennett advised that the findings presented were gathered chronologically from the file and lists the action the City has taken in respect to this property. She stated that the decision of the Commission would be appealable to the City Council within ten days.

**MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 14-17V, TO RECOMMEND THE CITY COUNCIL UPHOLD AND AFFIRM THE \$1,000 VACANT PROPERTY MONITORING FEE IN ITS ENTIRETY BASED ON THE THIRTEEN FINDINGS OF FACT PRESENTED BY STAFF.**

THE MOTION PASSED UNANIMOUSLY.

Chairman Wessling briefly recessed the meeting at 6:59 p.m.

Chairman Wessling reconvened the meeting at 7:01 p.m.

2. CASE 14-16V – ILEYMI AND CLEMENTE RAMOS – 10958 NORWAY STREET  
NW – SPECIAL ASSESSMENT OBJECTION

Housing Inspector Leya Drabczak reviewed the background on the case. She stated that the property received citations for expired tabs and registration on more than one vehicle in a 12-month period. She stated that the vehicles were brought into compliance and those citations were not charged but the fee is being charged because there was more than one incident in a 12-month period.

Chairman Wessling opened the public hearing at 7:03 p.m.

Ileymi and Clemente Ramos addressed the Commission. Ileymi Ramos referenced the dates of April 23, 2013, and April 9, 2014, on which the citations were issued. She explained that one of the vehicle plates had fallen off the vehicle and they had reinstalled that plate once made aware of this. She stated that she is out of work and they had purchased a vehicle at auction. She stated that the vehicle did have the temporary yellow permit in the window, which allows for 21 days to register the vehicle.

Housing and Zoning Coordinator Cheryl Bennett asked for clarification on the third vehicle.

Clemente Ramos stated that vehicle had a permit, too. They did speak with the inspector, who stated that since there was no cost to the City he recommended that they come forward tonight to appeal the decision.

Chairman Wessling confirmed that all vehicles were found to be, or have been, brought into compliance.

As no one further wished to speak, Chairman Wessling closed the public hearing at 7:09 p.m.

Commissioner Vande Linde stated that the citations were never issued because the vehicles were found to be in compliance, noting that this item came forward because the City was at the property at two different instances within a one-year period.

Chairman Wessling confirmed that the vehicles were found to be compliant and staff simply had not seen the permits.

MOTION BY COMMISSIONER VANDE LINDE, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 14-16V, TO RECOMMEND THE CITY COUNCIL RESCIND THE STAFF RECOMMENDATION OF THE SPECIAL ASSESSMENT OF \$150, BASED ON THE COMPLIANT NATURE OF THE PROPERTY.

THE MOTION PASSED UNANIMOUSLY.

3. CASE 14-18V – OKUNI OKWAN –165 EGRET BOULEVARD – SPECIAL ASSESSMENT OBJECTION

Housing Inspector Leya Drabczak reviewed the background on the case. She stated that the inspector issued a citation on June 16 for a vehicle with expired tabs and an outdoor storage issue. She advised upon reinspection the vehicle was still not in compliance but the outdoor storage issue had been corrected. A new citation was issued for the vehicle. The owner asked for a two-week extension. On June 17, a long grass citation was issued. She stated that based upon reinspection the City also had to cut the grass.

Chairman Wessling opened the public hearing at 7:19 p.m.

Okuni Okwan stated that he did cut the grass prior to leaving for overseas and again cut the grass when he returned. He stated that in regard to the vehicle that was on his property, that vehicle was not in his name and he was unable to contact the owner to resolve the situation. He stated that he did speak with the police and they were unable to assist in the situation. He stated that in regard to the junk in the yard, that was actually cardboard boxes of material being used to fix his home. He explained that he was overseas when this issue occurred and resolved the situation as soon as he returned.

Bonnie Nelson appeared before the Board and stated that her dad and Okuni Okwan had been friends for a long time and she had brought her vehicle to his property to be fixed. She stated that since that time, her parents passed away and she was homeless. She stated that once she did receive his call she purchased tabs for the vehicle and had it towed away to a company that pulls parts.

Mr. Okwan confirmed that once the stone was installed he placed the cardboard in his recycling himself.

Housing and Zoning Coordinator Cheryl Bennett stated that he was not charged for the abatement as the outdoor storage issue had been corrected prior to staff visiting the site to remove that material.

Commissioner Vande Linde clarified that three citations had been issued, one for the vehicle, one for the outdoor storage and one for the long grass.

Ms. Bennett stated that the grass had been cut prior to staff returning to the site to take that corrective action, but explained that City policy is to charge the fine. She explained that the time to dispute the citation has passed and this is simply for the assessment.

Mr. Okwan stated that he would have resolved the vehicle situation if he could have but was unable to do so until he reached the vehicle owner. He stated that he cut the grass prior to leaving to go overseas and his wife had a c-section and was unable to take that action.

As no one further wished to speak, Chairman Wessling closed the public hearing at 7:29 p.m.

Assistant City Attorney Melissa Westervelt explained the items that should be considered when reviewing an assessment.

Chairman Wessling noted that it is very clear on the citation that the resident can call City Hall to explain and resolve the situation. He explained that once that time period expires it is very difficult for the Board to rescind the assessment.

Commissioner Thorup stated that when going out of town on vacation residents should speak with friends or neighbors to watch their property and/or assist in mowing when needed.

Commissioner Vande Linde stated that there was reason for the vehicle to be at the property, as the property owner was fixing the vehicle.

MOTION BY COMMISSIONER THORUP IN CASE 14-18V, TO RECOMMEND THE CITY COUNCIL AFFIRM THE \$600 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION FAILED FOR LACK OF A SECOND.

Commissioner Vande Linde referenced the long grass assessment and noted that the resident testified that he was out of the country when the notice was posted and his wife was recovering from a c-section so he did not believe the resident had an opportunity to correct the situation. He noted that once the resident returned home, he made the property compliant. He agreed that the City followed proper procedure but believed that there were extenuating circumstances.

MOTION BY COMMISSIONER VANDE LINDE, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 14-18V, TO RECOMMEND TO THE CITY COUNCIL THAT THE SPECIAL ASSESSMENT BE MODIFIED FROM \$600 TO \$300 BASED ON THE TESTIMONY OF THE PROPERTY OWNER THAT HE LACKED THE KNOWLEDGE AND ABILITY TO ACT ON THE CITATION WITHIN THE COMPLIANCE PERIOD.

THE MOTION PASSED UNANIMOUSLY.

4. CASE 14-19V – MALIK ALKAMEL – 9933 DOGWOOD STREET NW – SPECIAL ASSESSMENT OBJECTION

Housing Inspector Leya Drabczak reviewed the background on the case. She stated that inspectors visited the property March 25 and issued administrative citations on two vehicles found to not be in compliance. She stated that upon reinspection, one vehicle was compliant and one was not. She stated that another citation was issued for the noncompliant vehicle and noted that upon reinspection that vehicle was found to be in compliance.

Chairman Wessling confirmed that these citations were for noncompliant vehicles on a rental property.

Chairman Wessling opened the public hearing at 7:43 p.m.

Fowzi Alkhulidi spoke in representation of Malik Alkamel, noting that he has power of attorney while the property owner is out of town. He provided the power of attorney information to the Commission for review. He stated that Mr. Alkamel had told the tenant to move his vehicle into the garage or remove it from the property. He stated that upon visiting the property they did not see the vehicle. He stated that the tenant had been removed from the property because of this issue and others.

Ms. Drabczak stated that City regulations regarding rental properties include information that the landlord should include language in their lease that states that tenants would be responsible for citations.

Chairman Wessling stated that it would be the responsibility of the landlord and that perhaps the landlord could recoup the assessment from the tenant's deposit.

As no one further wished to speak, Chairman Wessling closed the public hearing at 7:50 p.m.

Chairman Wessling stated that he did not see any reason not to affirm the assessment in this case.

**MOTION BY COMMISSIONER SPANO-MADDEN, SECOND BY COMMISSIONER THORUP, IN CASE 14-19V, TO RECOMMEND THE CITY COUNCIL AFFIRM THE \$600 SPECIAL ASSESSMENT IN ITS ENTIRETY.**

**THE MOTION PASSED UNANIMOUSLY.**

**5. CASE 14-20V – CARL VILLELLA – 10659 FOLEY BOULEVARD – SPECIAL ASSESSMENT OBJECTION**

Housing Inspector Leya Drabczak reviewed the background on the case. She stated that the City received notice from the utility billing department that the unit was not owner occupied. She stated a compliance letter was sent, but the letter contained an error in the compliance date. Staff revisited the property in April and found there had been no change in status nor had there been contact from the owner. A second compliance letter was sent to the owner. She also advised that a citation had been issued in May for long grass and the grass was cut by City staff in June. She advised that the property owner came to City Hall in June stating the property was a relative homestead, but Anoka County homestead requirements do not include cousins. She stated that staff recommends reducing the assessment from \$1,800 to \$800 because of the error in the compliance date.

Chairman Wessling opened the public hearing at 7:56 p.m.

Carl Villella stated that he purchased the property and intended to live at the home long-term. He explained that since that time, the road was widened and the sidewalk was installed much closer to the home. He stated that he had to move and he could not sell the home because of the changes in the roadway, so he rented out the house. He stated that he was a first time landlord and was not aware of the licensing requirement. He stated that once he received the letter from the City he did evict the renters, noting he received rent for a total of three months. He stated that his family moved close by and therefore he sometimes stays at this location as well. He



acknowledged that he was not in compliance at the time the first letter had been sent but he changed the rental status since that time. He noted that three months ago he had a break in on the property. He stated that he had a cousin that needed a place to stay and he allowed his cousin to stay at the property free of rent to ensure that there were not additional break ins. He stated that since that time, he has spoken with his dad and his dad has moved into the home and he has applied for homestead status. He stated that he was on vacation in Europe for four weeks at the time of the grass citation and believed that the City would have started construction by that time, which is why he did not make arrangements for the grass. He provided photographs of the property and the construction occurring, noting that the yard has construction equipment on it. He advised that there is only eight feet of front yard remaining after the City claimed the remaining land for the construction.

Housing and Zoning Coordinator Cheryl Bennett clarified that this is an Anoka County project and it is the county, not the City that purchased properties and is in charge of the construction.

Chairman Wessling confirmed that the resident rented his property for three months and was then caught without a rental license.

Mr. Villella stated that he went to the county and changed the status of the property to rental. He stated that once he received notice that he would need a license he asked the renters to leave the property. He stated that from November 2013 to present no one but himself has lived at the property. He stated that the letter he received did not state that he should call, it simply stated that he should call if he continued to rent the property. He suggested City staff email letters instead of mailing them.

Commission Spano-Madden stated that may be a good idea, however, there is no way for City staff to find email addresses for property owners.

Commissioner Vande Linde stated that he believes that even if relatives are living at the property helping with the mortgage payments that is still considered a rental because they are not immediate family.

Ms. Drabczak stated that it is not about the money being exchanged but the occupancy. She reviewed the process that is followed to determine if the property is not owner occupied. She stated that if the property is properly qualified as a homestead, a rental license would not be needed. She explained that there had not been any communication from the owner in this regard. She explained that a resident can own and live in as many homes as they like but they can only homestead one property.

Mr. Villella confirmed that he has filed the paperwork for a relative homestead three weeks ago. He explained that he was not attempting to be a landlord but simply trying to make the mortgage payments.

Chairman Wessling stated that it appears the communication lines fell apart in this process.

Mr. Villella agreed that he did not call the City to clarify that he was no longer renting the property.

Assistant City Attorney Melissa Westervelt explained that the compliance letter provides direction on what needs to occur.

As no one further wished to speak, Chairman Wessling closed the public hearing at 8:13 p.m.

Commissioner Spano-Madden stated that in the past the Commission has upheld the rental license requirement even if someone is living there and not paying rent.

Commissioner Vande Linde confirmed that there are two \$500 fees for the rental license issue and that staff is recommending that one of those fees be waived and that the \$300 lawn maintenance fine be upheld as well.

Ms. Bennett clarified that there would have been a total of \$1,500 in rental violations, and staff is recommending that the first violation fine of \$500 be forgiven because of the error with the date on the original citation. Staff is also recommending the second violation fine of \$1,000 be reduced to \$500 as if it were the first violation issued.

Commissioner Vande Linde stated that the resident did receive notice and did what he could do address the issue and bring the property into compliance. He believed that the Commission would need to find a flaw in the procedure used to determine if the property is being rented. He referenced the grass cutting issue and stated that if the resident is correct in that the county owns the property the City cannot assess the county.

Commissioner Thorup stated that she would be in favor of rescinding the rental licensing fees and leave the grass cutting fees stand.

**MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 14-20V, TO RECOMMEND THE CITY COUNCIL MODIFY THE SPECIAL ASSESSMENT FROM \$1,800 TO \$300 TAKING INTO CONSIDERATION THE ADMINISTRATIVE ERROR IN THE FIRST RENTAL LICENSE COMPLIANCE ORDER AND THE ABSENCE OF A TENANT DURING THE SECOND CITATION, THEREBY LEAVING THE \$300 LONG GRASS CITATION PENALTY.**

**THE MOTION PASSED UNANIMOUSLY.**

Chairman Wessling briefly recessed the meeting at 8:25 p.m.

Chairman Wessling reconvened the meeting at 8:33 p.m.

**6. CASE 14-22V – ROBERT AND LAURIE OLSON – 12528 FLINTWOOD STREET NW – SPECIAL ASSESSMENT OBJECTION (Agenda Item 7)**

Housing Inspector Leya Drabczak reviewed the background on the case. She stated that the property was noted through utility billing that this was a rental property. She stated that the compliance letter was sent in September 2012 with a \$500 penalty charged in December 2012. She advised that a second compliance letter was sent in December 2013 including a \$1,000

penalty. She advised that the property owner asked for and received a two-month extension. She stated that the time extension expired and the status still had not changed so the \$1,000 penalty was charged. She stated that a \$2,000 compliance letter was issued and then charged to the property. She stated that she spoke with the resident today and, as of today, the relative homestead status has been granted.

Chairman Wessling opened the public hearing at 8:37 p.m.

Laurie Olson stated that she and her husband purchased the property from a family member in 2003 with the intent to fix the home and resell the property. She stated that the house has sat vacant and they have never rented the property. She stated that they paid all expenses from 2003 through 2011. She stated that her nephew and his wife fell on hard times and she allowed them to move into the home with the plan to simply pay the utilities. She advised she did not collect rent on the property and since that time her nephew and his wife have purchased a home in Mora. She stated that the utility bills have always been sent to her home in Stillwater. She stated that they cut the grass and shovel the sidewalk and maintain the property. She stated that because the property values have fallen they have not sold the home and have simply maintained it. She referenced the notification letter and found the direction to be confusing. She explained that she never rented the property and had no intention renting it. She stated that she was not aware of the first penalty of \$500 had been assessed and paid. She stated that one of her nephews has been living in the home for about one year since his divorce and is paying the utilities with the intention to purchase the home in the future. She stated that in retrospect she should have been in communication with the City throughout this process. She stated that although she would like to sell the property, the market value is not enough to recoup the funds that have been spent. She noted that she did file the paperwork for a relative homestead with the county today. She reiterated that she has never rented this home.

Chairman Wessling clarified that the home has been vacant for a number of years.

Ms. Olson stated that there was a lot of work that had to be done to the home, even though the market had dropped. She noted that building permits were pulled in 2009. She stated that utility bills and correspondence from the City have always been sent to her Stillwater address. She confirmed that she has been in contact with the City throughout the years because of gas and water shut offs and assumptions that the property was abandoned. She said Connexus shut off gas service and she would use electric heaters in basement. She stated that since 2003 they have maintained the property better than the previous property owner. She noted that while it seemed like a good idea to purchase the property and flip it in 2003 has not been such a good idea but she has maintained the property and been a good neighbor.

Commissioner Thorup asked for details on when Mrs. Olson spoke with City staff.

Mrs. Olson stated that she did not discuss the original letter with staff, but she did speak with staff at the time of the second letter regarding her nephew staying at the property and did mention the letter. She stated that when she received the first letter she believed that she did not have to take action because she was not renting the property.

Commissioner Thorup stated that on the original notification there is a compliance date listed and questioned why she did not call the City.

Mrs. Olson stated that she believed that the City had made a mistake in thinking she was renting a property and stated that, in hindsight, she should have contacted the City.

Chairman Wessling stated that the letter clearly states that the property has been identified as a rental and occupied by someone other than the owner and the City will proceed under that premise.

Mrs. Olson stated that the property has always been classified as a non-homestead because they have never lived at the home. She stated that she was proud that she was paying the double taxes because she did not homestead the property. She stated that the property had never been a rental property and she has spoken with staff but agreed that she should have been in further contact with the City.

Commissioner Thorup stated City staff could not have known without communication from the property owner and it comes down to whether City staff was doing their job appropriately.

Chairman Wessling stated that this is a hard situation because she is a good property owner but stated that in order to reverse the assessment the Commission would have to prove that the City did not do their job.

Commissioner Thorup believed that the letter should have triggered questions for the property owner and to contact the City to clear up the miscommunication.

Commissioner Vande Linde confirmed that the property owner admits that she does have some responsibility and questioned how much the owner feels that she is responsible in terms of dollars.

Mrs. Olson suggested that perhaps the City should split the fee with her because she believed that there was a communication error on the part of both parties.

Commissioner Vande Linde stated that the Commission is appreciative of the efforts of the property owner and commended her for taking care of her family. He believed that it was clear that she was not renting the property.

As no one further wished to speak, Chairman Wessling closed the public hearing at 9:04 p.m.

Chairman Wessling stated that he believed that there was sufficient proof and contact to prove that this property was not a rental. He acknowledged that the process of identifying a rental property by the City is flawed.

Commissioner Thorup stated she would be in favor of reducing the penalty by 50 percent due to the communication errors.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER VANDE LINDE, IN CASE 14-22V, TO RECOMMEND THE CITY COUNCIL MODIFY THE \$3,000 SPECIAL ASSESSMENT TO \$1,500, BASED ON EXTENUATING COMMUNICATION AND PROCEDURAL CIRCUMSTANCES REGARDING THE NON-RENTAL STATUS OF THE PROPERTY.

THE MOTION PASSED UNANIMOUSLY.

7. CASE 14-23V – RICHARD SMILEY – 2720 NORTHDAL BOULEVARD – SPECIAL ASSESSMENT OBJECTION (Agenda Item 8)

Housing Inspector Leya Drabczak reviewed the background on the case. She stated that the property was visited and found to be vacant in July 2012, and the property was posted and the water was shut off. She advised that the City has also identified the property as unsafe for human habitation. She stated that in August 2012 the storm doors and postings had been removed and noted that the City had to repost the property. She stated that the next day the postings were removed and the City had to repost. Later that day, the postings were removed but the owner was painting the property, so inspectors went back two days later, and reposted for a third time. She stated that the posting were again removed, noting for the fourth time, and that staff had to repost the property. She stated that staff revisited the property after the posting had been removed for a fifth time and reposted the property.

Chairman Wessling questioned how long the property has been vacant.

Ms. Drabczak advised that the original vacancy notice was posted on the property July 19, 2012. She advised that the property is currently vacant and posted unsafe for human habitation.

Chairman Wessling opened the public hearing at 9:12 p.m.

Richard Smiley, 1886 121<sup>st</sup> Avenue NE, Blaine, stated that he removed the postings, which were cited by the police, as he believed there are other methods to post the notice. He stated that he went to court and ultimately the citation was dismissed.

Assistant City Attorney Melissa Westervelt advised that the property was originally posted with an uninhabitable placard, and Mr. Smiley was charged criminally for removing the placard. The placard was left on the property and City staff decided to dismiss and not move forward with a jury trial with prosecuting him on that crime. She explained that those are separate charges from these citations.

Mr. Smiley provided background information on the situation, noting that he purchased the property in 2007, and because of harassment from City staff, sold the property contract for deed. He stated the City then harassed the tenants, so the tenants left and gave the property back to him.

Chairman Wessling asked Mr. Smiley for his definition of harassment by the City.

Mr. Smiley did not respond.

Commissioner Vande Linde stated that while he does not agree with the previous statement made by Mr. Smiley regarding harassment, he would like to keep the focus of this discussion on the assessments.

Chairman Wessling questioned why the property is vacant.

Mr. Smiley responded that there was a lack of water.

Chairman Wessling questioned why the water was off.

Mr. Smiley stated the water was turned off inadvertently. He provided a deposition from Doug Whitney stating the property was vacant with a dumpster on site. He explained that he had told City staff that he was living at the home and a note was made to not shut off water. He stated he was living at the home seasonally.

Ms. Westervelt stated that there is a long history with this property, noting that some with citations have gone through the criminal and/or civil court process. The deposition from Doug Whitney is from a harassment restraining order Mr. Smiley filed against Mr. Whitney. She stated that the only issue here is the excessive consumption of services.

Chairman Wessling stated that the time to object to the ruling has come and gone and this is simply for the excessive use fee assessment.

Commissioner Vande Linde stated that the fact remains that throughout the process the City has continued to post the property, both by City staff and by the Police Department. He explained that the police are present when posting to protect City staff from the resident. He clarified that the discussion tonight has nothing to do with the water being shut off but simply for the posting of the property and whether notice was provided.

Mr. Smiley stated that the notice was mailed to the vacant home and not to his proper address. He believed that the issue should be continued.

Ms. Drabczak stated that notification is sent to the owner of record address listed with Anoka County property records and noted that an additional notification was also sent to the address in Blaine. The notice sent to the Blaine address would be a duplicate of what was sent to the address listed with Anoka County.

Chairman Wessling stated that it appears the fee was paid.

Ms. Westervelt confirmed that the resident did pay the fee and then appealed it. She explained that if the assessment is upheld the resident has already paid it and that if the assessment were rescinded, the funds would be refunded. She stated that the resident has been notified and has been in contact with staff and has been at the property, so notification is not an issue. She stated that there never is a lack of communication with Mr. Smiley.

Ms. Drabczak explained that the assessment tonight is simply for excessive consumption of services concerning the postings having to be reposted because the resident was removing them.

Mr. Smiley stated that he never took the postings off the property and simply moved them. He stated that once City staff agreed to not place the postings inside his door on the window but instead on a stake in the yard, he left the posting.

Commissioner Vande Linde stated that the code states that the posting must be placed on the residence and advised that it appears that staff has negotiated placing the posting in an alternate location.

Mr. Smiley stated that he removed the posting because he was painting the doors and did not want the City to continue defacing his home. He provided a posting that he received regarding long grass, and he has since put bars on his windows to prevent postings on the windows. He stated the posting states the grass was eight inches but he measures on a daily basis and it was not more than eight inches. He was letting it go to seed before he mowed.

Ms. Westervelt noted that the City procedure for long grass is to post a notice at the property and a notice was mailed.

Commissioner Vande Linde stated that the only issue before the Board tonight is the excessive consumption fees. He stated the resident has acknowledged the excessive consumption by paying the fee and is now attempting to appeal that.

Mr. Smiley stated that he paid the fee in the past because someone in the past on the Commission called him a loser for not paying.

Commissioner Vande Linde stated that the Commission has been respectful to him tonight and no one has called him names. He stated that City staff has complied with everything that the Commission is required on, and charged with ruling on, and did not see any reason to continue discussion in this matter.

Mr. Smiley suggested going through each of the \$150 charges and that he would address each one individually.

Commissioner Vande Linde recommended that the charge is for \$750 tonight and the Board should not discuss each charge individually.

Chairman Wessling stated that the City has spent staff time and funds to address this issue time after time.

Mr. Smiley stated that he was painting the doors and City staff kept taping the postings to the door, which removed the paint when he would remove the sign.

Commissioner Thorup stated that a property is posted as uninhabitable and the notice is posted to ensure safety for others that may enter the property without knowing that the property is unsafe.

Commissioner Vande Linde stated that the City has compromised with Mr. Smiley after many months on how the property will be posted. He explained that the reason the excessive consumption fees were issued is because it took that long to come to that compromise and staff time was expended.

Chairman Wessling stated that the City has attempted many procedures in posting notices and came up with the most effective way that the postings do not blow off.

As no one further wished to speak, Chairman Wessling closed the public hearing at 9:43 p.m.

MOTION BY COMMISSIONER VANDE LINDE, SECOND BY COMMISSIONER THORUP, IN CASE 14-23V, TO RECOMMEND THE CITY COUNCIL AFFIRM THE \$750 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

8. CASE 14-26V – GLENN WILLIAMS/SUPERIOR INVESTMENTS OF MN LLC – 11098 THRUSH STREET NW – SPECIAL ASSESSMENT OBJECTION (Agenda Item 11)

Housing Inspector Leya Drabczak reviewed the background on the case. She stated that an inspector visited the property to investigate exterior storage of a couch. She advised that a citation was sent to the property owner in Minneapolis. She stated that upon reinspection, the property was not in compliance and abatement was performed. She advised that upon another investigation, another citation was issued for additional items and the property owner contacted City staff requesting a time extension. Upon reinspection, those materials were removed and that fee was not charged.

Chairman Wessling opened the public hearing at 9:48 p.m.

Gary Williams, Superior Investments Minnesota, stated that he and his brother, Glen Williams, own the company that owns this property. He advised that this is a rental property and the couch was the property of a tenant. He stated that once they received the citation they advised the tenant to resolve the situation but it obviously was not handled. He stated that they had no ability to remove the couch as it was the property of the tenant. The tenant was given notice that the lease would not be extended and is no longer living in the property.

Commissioner Thorup questioned the date the tenant left the property.

Mr. Williams stated that the tenant left the property in March.

Commissioner Thorup questioned the amount of the damage deposit and questioned if the violation could have been deducted from the deposit.

Mr. Williams advised that the damage deposit was one month's rent and there was additional damage to the property, which the damage deposit was used toward.



Commissioner Vande Linde referenced the abatement charge, which was listed at \$190 on the bill and confirmed that the administrative charge of \$69 was included in the abatement charge. He confirmed that upon the second notification, the landlord collected the materials, which were in the yard and placed them in the garage and he is required to hold the belongings for a set period of time for redemption by the tenant.

As no one further wished to speak, Chairman Wessling closed the public hearing at 9:54 p.m.

MOTION BY COMMISSIONER SPANO-MADDEN, SECOND BY COMMISSIONER THORUP, IN CASE 14-26V, TO RECOMMEND THE CITY COUNCIL AFFIRM THE \$559 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

9. CASE 14-21V – ROME NOONE – 12331 GLADIOLA STREET NW – SPECIAL ASSESSMENT OBJECTION (Agenda Item 6)

Housing Inspector Leya Drabczak reviewed the background on the case. Vehicles were parked off pavement twice in two months and were compliant both times upon reinspection. Because two violations occurred within 180 days, half the charge of the second violation was charged.

Chairman Wessling opened the public hearing at 9:57 p.m.

As no one wished to speak, Chairman Wessling closed the public hearing at 9:58 p.m.

Commissioner Vande Linde stated that he remembers a case of this nature in which the City Council ruled against the affirmation of the assessment by this Commission.

Housing and Zoning Coordinator Cheryl Bennett clarified that case was an appeal of notice of an administrative citation.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER VANDE LINDE, IN CASE 14-21V, TO RECOMMEND THE CITY COUNCIL AFFIRM THE \$300 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED 3-1. COMMISSIONER VANDE LINDE OPPOSED.

10. CASE 14-24V – BRANDY HERBST C/O ANONA SMITH – 859 111<sup>TH</sup> AVENUE NW – SPECIAL ASSESSMENT OBJECTION (Agenda Item 9)

Housing Inspector Leya Drabczak reviewed the background on the case. She stated that this property has been on City staff radar for over 15 years. She explained that the owner's son collects items but the fees are charged to the property owner. She stated that staff attempts to work with the property owner but that communication has broken down. She advised that the citation was sent and additional time was given for compliance. She stated that three 40-yard dumpsters were filled with debris from the yard and advised of the safety and fire hazards. She stated that the property owner is now in assisted care and there are family disputes. She stated

that the violation was founded and abatement necessary. She confirmed that the yard was cleaned up as of the past week. She confirmed that the items were not of value.

Commissioner Vande Linde questioned whether the owner's son is still a resident of the property.

Ms. Drabczak stated she was told he has a residence in Cambridge but that he is still living in the residence.

Chairman Wessling opened the public hearing at 10:05 p.m.

As no one wished to speak, Chairman Wessling closed the public hearing at 10:05 p.m.

**MOTION BY COMMISSIONER VANDE LINDE, SECOND BY COMMISSIONER THORUP, IN CASE 14-24V, TO RECOMMEND THE CITY COUNCIL AFFIRM THE \$2,784 SPECIAL ASSESSMENT IN ITS ENTIRETY.**

**THE MOTION PASSED UNANIMOUSLY.**

**11. CASE 14-25V – JOHN AND DIANA SMULDERS – 852 86<sup>TH</sup> LANE NW – SPECIAL ASSESSMENT OBJECTION (Agenda Item 10)**

Housing Inspector Leya Drabczak reviewed the background on the case. She stated that City staff investigated a complaint regarding vehicles and a trailer being parked on an unpaved surface in May, noting that upon reinspection the status had not changed. She advised that a second citation was issued and upon reinspection in June, the vehicle issue remained but the trailer had been made compliant so the fee had been reduced by half. She stated that a third citation was issued for the vehicle and upon reinspection, the vehicle was made compliant and therefore the charge was reduced by half.

Commissioner Vande Linde questioned if the vehicle and trailer would have been considered one violation if the trailer would have been attached to the vehicle.

Ms. Drabczak stated that would not have made a difference.

Chairman Wessling opened the public hearing at 10:09 p.m.

Chairman Wessling read the objection of the resident stating that he was on crutches and resolved the situation once he was able, and referenced other parcels that are not compliant.

Chairman Wessling stated that he drove past the property was ashamed that the City is after this man, noting that there are several properties out of compliance in that neighborhood. He stated that this vehicle was on an improved surface with a flat tire while there are several other properties in much worse shape.

Ms. Drabczak stated that she normally works with the rental housing inspections and was unsure if the other properties in the neighborhood were cited.

Assistant City Attorney Melissa Westervelt stated that just because those violations do not appear in front of this Commission does not mean that they have not been cited.

Chairman Wessling stated that a person can't drive by and not see all the violations in the neighborhood.

Housing and Zoning Coordinator Cheryl Bennett stated that staff would have information on which neighboring properties have been cited, but that the issue before the Board for consideration at this time is this property.

Commissioner Vande Linde stated that staff was sent to investigate something at this property. He stated that it is unknown whether staff cited other properties in that area while there. He stated that while it may seem excessive, proper procedure was followed and the resident did not attend the meeting tonight.

Commissioner Thorup stated that the resident could have called before the compliance date expired.

Chairman Wessling asked if the Commission would continue this to allow the resident to attend.

Assistant City Attorney Westervelt stated that this Commission is simply making a recommendation to the City Council and that decision would not set precedent for the future.

Chairman Wessling questioned if the Board's decision was final or if the resident can appeal the decision.

Ms. Bennett stated the Board is making a recommendation to the City Council. The City Council has the final say. The property owner can take this to District Court if he chooses.

As no one wished to speak, Chairman Wessling closed the public hearing at 10:15 p.m.

Commissioner Vande Linde stated that it appears the City followed the proper procedure and suggested that this be affirmed and passed to the City Council, noting that the resident would have an opportunity to appeal that decision.

Ms. Bennett stated that this is the opportunity to be heard in a special assessment and there is no guarantee that he would be heard at the City Council meeting. This is the hearing process as established by Council.

Commissioner Vande Linde stated that there is basis to reduce the assessment. City staff went through the process. There was no contact from the homeowner.

Ms. Drabczak stated that the resident did not contact City staff and that staff follows the code which provides for the steps.

MOTION BY COMMISSIONER VANDE LINDE, SECOND BY COMMISSIONER THORUP, IN CASE 14-25V, TO RECOMMEND THE CITY COUNCIL AFFIRM THE \$2,100 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

12. ADJOURNMENT

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER SPANOMADDEN, TO ADJOURN THE MEETING AT 10:22 P.M. THE MOTION PASSED UNANIMOUSLY.

Respectfully submitted,  
Amanda Staple  
Board of Adjustment and Appeals Secretary



## **Board of Adjustment and Appeals - Regular Session**

**1.**

**Meeting Date:** 11/06/2014

**Subject:** PC 14-27V, Thomas Boden, Rear Yard Setback, 12221 Olive Street

**From:** Scott Harlicker, Planner

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### **INTRODUCTION**

The petitioner is requesting variances to the rear yard setback requirements for an existing house and attached deck to allow the property to be subdivided. The petitioner has received approval, subject to the granting of these variances, to divide the existing lot into two single-family lots. The proposed setback is 27 feet for the house and 16 feet for the deck. A variance of eight feet is requested for the house and four feet for the deck.

Conduct a public hearing  
Decision by Board of Adjustment and Appeals  
Appeal if necessary to City Council

### **DISCUSSION**

#### **Background**

The property is zoned Low Density Residential 2 (LDR2), which is a single family residential zoning district. The lot is located in Colleen Addition subdivision, which was platted in 1984. The applicant has applied to the City for a lot split to subdivide the existing 34,533 square foot parcel into two single-family parcels. Parcel 1, which includes the existing house, will be 20,194 square feet; Parcel 2, which will front on 122nd Avenue NW, will be 14,359 square feet. Both parcels exceed the dimensional and area requirements of the LDR 2 zoning district. Public utility services for water and sanitary sewer, were extended to serve the east portion of this lot when the utilities were installed some years ago. The need for the variance is a result of the proposed lot split. The Planning Commission has reviewed the proposed lot split and recommended approval subject to the granting of the variances. The City Council will be considering the proposed lot split at their November 5, 2014, meeting.

The applicant has worked with staff on possible alternatives for the location of the division line. However, those alternatives resulted in lot configurations that were not acceptable, containing odd corners, angles and remnant pieces.

City Code Section 11-603.2(12)(a) requires a rear yard setback of 35 feet for a house and 20 feet for an attached deck. The proposed setbacks are 27 feet and 16 feet, respectively.

#### **Considerations**

The granting of a variance from the setback regulations of City Code requires the following findings be made in conformance with City Code Section 11-304.9(2), Standards of Approval for granting variances:

1. *The variance is in harmony with the general purposes and intent of the ordinance from which the variance is requested.*

The granting of the variance would allow the creation of two lots that meet the dimensional requirements of the of the LDR2 zoning district and are in harmony with other lots on the block.

*2. The variance is consistent with the Comprehensive Plan.*

The Comprehensive Plan has guided this area as low density single family residential lots. The granting of the variance would allow the creation of lots that are consistent with lot sizes identified in the Comprehensive Plan.

*3. Unless the variance is granted, the property cannot be used in a reasonable manner. If a property can be used reasonably without the granting of a variance, it can be used in a reasonable manner.*

To utilize the property in a reasonable manner a lot split is needed, and unless the variance is granted the lot split cannot be approved. The lot is 0.8 acres in size which is more than twice the size of the other lots on the block. The subdivision would result in two parcels that are in character with the other lots on 122nd Avenue NW and Olive Street.

*4. The variance requested must be the minimum to make reasonable use of the property.*

The variances requested are the minimum needed to subdivide the lot in a manner that is consistent with the subdivision regulations.

*5. The plight of the applicant or landowner is due to circumstances unique to the property not created by the applicant or landowner.*

The configuration of the north property line is unique to this lot and creates the circumstance that triggers the need for the variances. If that lot line was straight and did not have a jog, the new line line could be shifted to the east without resulting in an irregularly shaped lot, and the structure on parcel 1 would comply with the setback requirements.

*6. The variance, if granted, will not alter the essential character of the locality.*

The variance would not alter the character of the area. The variance, if granted, would allow the subdivision of a large lot into two parcels that are similar in character to the surrounding lots.

## **RECOMMENDATION**

In Planning Case 14-27V, staff recommends approval of an eight-foot rear yard setback variance for the existing single-family structure and a four-foot rear yard variance for the attached deck, both from City Code Section 11-603.2(12)(a), to allow the property to be subdivided into two single-family residential lots, upon the finding that the request meets the requirements of City Code Section 11-304.9(2), Standards for Approval for granting variances and subject to the following condition: The variances are granted for the existing single-family structure and its existing attached deck only.

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## **Attachments**

Location Map

Survey

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# Location Map





